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No. 94-1511

Supreme Court, U.S.

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CLERK

**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995**

SAMUEL LEWIS, *et al.*,

Petitioners,

v.

FLETCHER CASEY, JR., *et al.*,

Respondents.

**On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit**

**BRIEF OF AMICUS CURIAE NORTH
CAROLINA PRISONER LEGAL
SERVICES, INC.
IN SUPPORT OF RESPONDENTS**

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QUESTION PRESENTED

Is an illiterate or non-English speaking prisoner afforded meaningful access to the courts by the mere existence of a law library?

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INTEREST OF AMICUS CURIAE

North Carolina Prisoner Legal Services, Inc.

(NCPLS) is a non-profit organization, established in 1978, that provides free legal assistance to North Carolina prisoners in all state and federal courts in North Carolina. NCPLS handles a majority of the litigation on behalf of prisoners in North Carolina, including cases challenging prison conditions and unconstitutional criminal convictions. Complaints of illiterate and non-English speaking prisoners are a priority of NCPLS.

The issue involved in this case--whether illiterate and non-English speaking prisoners should be provided legal assistance--is an issue of significant importance.¹ During the

¹One government study over two decades ago found that 82% of all prisoners had not completed high school and that 55% had not finished the first grade. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections 2 (1967). These findings have been replicated in more recent times. *See, e.g.*, Raymond Y. Lin, Comment, *A Prisoner's Right to Attorney*

past 17 years, NCPLS has successfully represented numerous illiterate and Non-English speaking prisoners in civil constitutional claims and post-conviction claims.² It is for these reasons that NCPLS respectfully offers its assistance to the Court.

SUMMARY OF ARGUMENT

The core judicial inquiry in determining the constitutionality of an inmate access program is whether the legal assistance provided allows all inmates a meaningful opportunity to present claimed violations of fundamental

Assistance, 83 Colum L. Rev 1279, 1281 (1983)(citing a 1974 study by the Justice Department demonstrating that "nationally, there are large numbers of illiterate or semi-illiterate prisoners").

²Historically the illiteracy rate of North Carolina inmates has been extremely high. *Smith v. Bounds*, 610 F. Supp. 597, 604 (E.D.N.C. 1985), *cert. denied*, 488 U.S. 869 (1988). This was one of several factors that led the court to find that defendants' library system did not provide adequate access to the courts. Senior District Judge Dupree ordered defendants to provide inmates with assistance of counsel.

constitutional rights to the courts. Non-English speaking inmates and illiterate inmates are not afforded an adequate opportunity to present their claims to the court by the mere existence of a law library.

ARGUMENT

I. THE CONSTITUTION REQUIRES THAT ILLITERATE AND NON-ENGLISH SPEAKING PRISONERS BE AFFORDED MEANINGFUL ACCESS TO THE COURTS.

"It is now established beyond doubt that prisoners have a constitutional right of access to the courts." *Smith v. Bounds*, 430 U.S. 817, 821 (1977).³ In *Bounds*, this Court

³Although *Bounds* unequivocally recognized the right of access to courts, it was not as explicit on the source of the right. However, this Court has indicated that the right is found in the Fourteenth Amendment's guarantee of due process. *Procunier v. Martinez*, 416 U.S. 396, 419 (1974). Moreover, to the extent that it provides access to all inmates, not just those who can afford to hire attorneys, it is also an aspect of the equal protection clause. *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987).

held that states have an affirmative duty to assist prisoners in presenting their claims to the court.

In the present case, after a three month bench trial, the court found that functionally illiterate prisoners and non-English speaking prisoners have had their claims dismissed with prejudice or have been unable to file legal actions. In accordance with *Bounds*, the Arizona district court ordered that legal assistance shall be provided to prisoners who because of language deficiencies are unable to perform adequate legal research and writing. *Casey v. Lewis*, 43 F.3d 1261, 1265 (9th Cir. 1994).

A. Examples of NCPLS representation to illiterate and non-English speaking prisoners.

Michael J. Roary, who has been deaf and mute for most of his life, is an inmate who has been confined at Sampson Correctional Center in Clinton, North Carolina since February 1993.

Hearing and speech loss, especially when it occurs in the early years of life, can result in problems learning spoken language which then leads to difficulties understanding the same language when it is written. As a result, Mr. Roary has a limited understanding of written English. American Sign language (ASL) and not English is the "native" language of Plaintiff.

ASL, as a language, is completely distinct from English in grammar, syntax, idioms and vocabulary. ASL sentences do not follow English sequential patterns. Thus, direct translation of English, as with written notes, into ASL will not necessarily convey the intended message. Similarly, much of English idiomatic speech is lost on the ASL user whose frame of reference for idiom is significantly different from that of a hearing person. No staff member or inmate at Sampson Correctional is certified by a recognized certification agency as a sign language interpreter.

Mr. Roary has been diagnosed with an ulcer and suffers from urinary, prostate, and intestinal problems. The North Carolina Department of Correction fails to provide Mr. Roary with an interpreter at routine medical visits, routine mental health visits, and during educational, instructional and religious programs. Consequently, Mr. Roary has difficulty communicating during medical and mental health visits and, in effect, is denied instructional, educational and religious programs. NCPLS has undertaken to represent Mr. Roary in his various claims.

In 1979 Mr. Joseph Elie Louissaint fled from Haiti, in fear of his life, and came to the United States. Mr. Louissaint had attended school in Haiti on an irregular basis through the third grade. School was conducted in French. He could not read, write, speak, or understand French. His native language is Creole. Mr. Louissaint did not know any English when he came to the United States and never had any formal

schooling in this country. He could not read or write in English and had only a minimal understanding of spoken English.

On October 18, 1988, he was arrested for possession of 2.6 grams of cocaine. Mr. Louissaint subsequently pled guilty and was sentenced to a three year prison term. Due to Mr. Louissaint's low comprehension of the English language a full plea colloquy was not held. NCPLS first interviewed and undertook to represent Mr. Louissaint after he had received an Order to Show Cause in a deportation proceeding from the Immigration and Naturalization Service.

Shortly thereafter, at Mr. Louissaint's request, the Department of Correction contacted a retired schoolteacher to see if she would teach him to read and write. In the school teacher's opinion, Mr. Louissaint did not know what was required for Basic Survival English.

NCPLS represented Mr. Louissaint at a state postconviction hearing. The Superior Court for the eighteenth judicial district found that the trial court's failure to advise Mr. Louissaint of the nature of the charge, and his right to plead not guilty amounted to reversible error and vacated the judgment. The state did not re-try Mr. Louissaint. He is now a productive civilian residing in Chapel Hill, North Carolina.

B. States have an affirmative duty to provide prisoners with meaningful access to the courts.

The district court's order was not an expansion of *Bounds*. On the contrary, the order merely effectuated the objective envisioned by this Court in the *Bounds* opinion. It is uncontroverted that *Bounds* imposes on prison authorities the affirmative duty to aid prisoners in the preparation of meaningful legal papers. *Bounds*, 430 U.S. 817, 828 (1977).

Nevertheless, Petitioners assert that: (1) the state does not have to take the next logical step of furnishing legal assistants to illiterate and non-English speaking inmates because the state has not created the impediment; and (2) the provision of a law library, by itself, conclusively satisfies constitutional muster, relieving a state of any other affirmative duty to provide inmate access to the courts.

This argument must fail for several reasons. First, the pre-*Bounds* cases dealt with state created impediments to a prisoners right of access. However, the Court in these earlier cases "did not attempt to set forth the full breadth of the right of access." *Id.* at 824. Moreover, even the pre-*Bounds* decisions have imposed some duty on the states "to shoulder affirmative obligations to assure all prisoners meaningful access to the courts." *Id.* (emphasis added).

These affirmative duties were imposed upon the states irrespective of the existence of a law library. For example,

indigent inmates must be provided with paper, pens, notary services and stamps, and states must forgo collection of docket fees otherwise payable to the treasury and expend funds for transcripts. *Id.* at 824-25. These affirmative duties do not dissipate upon creation of a law library. Similarly, irrespective of the existence of a law library, the states have an affirmative duty to assist illiterate and non-English speaking inmates in the filing of meaningful legal papers.

C. The mere existence of a prison law library does not relieve states of their affirmative duty to provide prisoners with meaningful access.

Petitioner's assertion that prison authorities are relieved of all responsibility upon establishment of law library misreads the purpose and scope of the right to access cases. The *Bounds* court held: "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate

law libraries or adequate assistance from persons trained in the law." *Id.* at 828. A law library standing alone is insufficient to provide illiterate and non-English speaking prisoners with meaningful access to the courts.

Moreover, this Court has long realized that a prisoner's right to access is not a static concept capable of rigid definition. Thus, in analyzing the constitutional touchstone in right to access cases, the Court has repeatedly stated the concept in adaptable terms such as "meaningful access" or "reasonable adequate opportunity." *Ross v. Moffitt*, 471 U.S. 611, 612, (1974) (meaningful access is the constitutional touchstone); *Bounds*, 430 U.S. 817, 825 (1977) ("whether law libraries or other forms of legal assistance are needed to give prisoners *a reasonably adequate opportunity* to present claimed violations of fundamental constitutional right to the courts.") (emphasis added). Illiterate and non-English speaking inmates are not afforded reasonably

adequate opportunities to present their claims, nor are they afforded meaningful access to the courts by the mere presence of a prison law library.

Respondents' reading of *Bounds* is in accord with the Sixth Circuit's analysis in *Knop v. Johnson*, 977 F.2d 966 (6th Cir. 1992), *cert. denied*, 479 U.S. 913 (1986). In *Knop* the court stated:

Standing alone, law libraries that are adequate for prisoners who know how to use them and who have reasonable physical access to their collections are not adequate for prisoners who cannot read and write English, or who lack the intelligence necessary to prepare coherent pleadings, or who, because of protracted confinement in administrative or punitive segregation or protective custody, may not be able to identify the books they need.

Id. at 1005-1006.

Moreover, Petitioner's reading of *Bounds* is in accord with other circuit opinions regarding a prisoner's right of access to the courts. *Cruz v. Hauck*, 627 F.2d 710, 721 (5th Cir. 1980) ("Library books, even if adequate in number,

cannot provide access to the courts for those persons who do not speak English or who are illiterate."); *Cody v. Hillard*, 599 F. Supp. 1025, 1061 ("a law library without more is not sufficient to enable prison inmates . . . unschooled in the basics of legal writing to prepare a petition or complaint"); *Glover v. Johnson*, 478 F. Supp. 1075, 1096 (E.D. Mich. 1979) (an adequate library "cannot provide meaningful aid to a prisoner unschooled in the most basic techniques of legal research"); *Canterino v. Wilson*, 562 F. Supp. 106, 108-112 (W.D. Ky. 1983), *cert. denied*, 110 S. Ct. 539 (1989) (mere access to an adequate legal library is unavailing to prisoners lacking sufficient intellectual ability to use the facility).

Petitioners also argue that non-English speaking and illiterate prisoners may ask for help from outside sources and any resulting burden to a prisoner is not of constitutional concern. This argument must fail because it ignores the rationale of the right to access cases. The *Bounds* decision

was premised on the acknowledgment that all prisoners, due to their status, are routinely precluded from enlisting assistance from outside sources that are available to free citizens.⁴

In reaching its holding, the *Bounds* court obviously realized the difficulty in accessing outside services for all inmates. It is anomalous to now assert, as Petitioners do, that it will be easier for non-English speaking or illiterate prisoners to access such services than it would be for English speaking literate prisoners. On the contrary, the burden of securing outside help for an illiterate or non-English speaking prisoner will be magnified due to his limited understanding

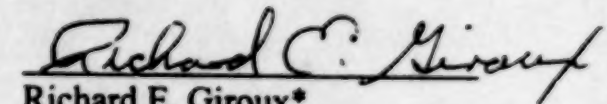
⁴Although *Bounds* did not specifically deal with the issue of illiterate and non-English speaking inmates, this Court was aware of that this class of individuals permeates the prison population. "Jails and penitentiaries include among their inmates a high percentage of persons who are totally or functionally illiterate, whose educational attainments are slight, and whose intelligence is limited." *Johnson v. Avery*, 393 U.S. 483, 487 (1969).

of the English language. Accordingly, Arizona's illiterate and non-English speaking prisoners are entitled to legal assistance.

CONCLUSION

A prison law library, by itself, is of no help to an illiterate or non-English speaking prisoner. This court should affirm the court of appeals judgment.

Respectfully submitted,


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an attorney at law licensed to practice in the state of North Carolina and the U.S. Supreme Court and is a person of such age and discretion as to be competent to serve process.

That on the 27th day of September, 1995, he served a copy of the attached:

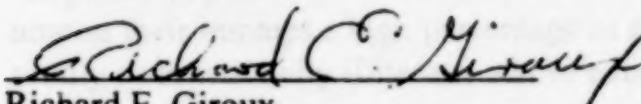
Brief of Amicus Curiae

by placing said copies in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below which is the last known address.

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